

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

March 14, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Request that the Board Grant in Part and Deny in Part Request for Contested Case Hearing by Pflueger Properties as to Authorization for Department and its agents, employees, and consultants, to Enter upon various private Properties and Easements / Right-of-ways for the purpose of conducting investigations and inspections of the Kaloko Dam, as Directed by Act 118, SLH 2006, Relating to Emergency Relief for Natural Disasters, and Pursuant to Hawaii Revised Statutes Chapter 179D.

At the Board of Land and Natural Resource's meeting of January 25, 2008, the Board approved the request to enforce the Board's and Department's rights as stated in Chapter 179D, to among other things, enter upon private property for the purposes of conducting surveys and investigations, in this case a phase II investigation of Kaloko dam and reservoir.

Subsequent to the approval, a petition for a contested case hearing was faxed and later mailed to the Department, by William C. McCorriston on behalf of Pflueger Properties. A copy of the petition and an amended petition are attached.

Upon the advice of the Department of Attorney General, the Department is requesting that the petition be granted in part and denied in part as follows: granted insofar as the petition requests a contested case as to whether Ka Loko dam is a dam within the meaning of chapter 179D; denied in all other respects.

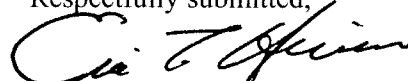
At the Board of Land and Natural Resource's meeting of February 22, 2008, the Board deferred action on the staff's recommendation pending the receipt and review of similar inspection data from the property owner which would preclude the necessity for the requested investigative work. Staff provided the property owner's legal representative with a request for various types of data on February 22, 2008. Staff has not received any information as of February 28, 2008.

RECOMMENDATION:


That the Board of Land and Natural Resources:

1. Grant the petition in part and deny it in part as follows: grant, insofar as the petition requests a contested case as to whether Ka Loko dam is a dam within the meaning of chapter 179D; deny in all other respects, and
2. That the Board authorize the appointment of a Hearings Officer for the subject Contested Case Hearing, and let the Hearing Officer conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and
3. That the Board delegates the authority for the selection of the Hearing Officer to the Chairperson.

Respectfully submitted,


ERIC T. HIRANO
Chief Engineer

APPROVED FOR SUBMITTAL:


LAURA H. THIELEN, Chairperson

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